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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/132,593	08/11/98	SAEBO	A 21440/9015

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HM22/0621

EXAMINER

WANG, S

ART UNIT	PAPER NUMBER
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1617

DATE MAILED:

06/21/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/132,593

Applicant(s)

SAEBO ET AL.

Examiner

Shengjun Wang

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 March 2000.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 9.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

Receipt of the response and amendment submitted March 28, 2000 is acknowledged.

Applicants are <sup>requested</sup> to note regarding claims 4-8 that it is not seen how an alkyl ester compound may comprise a composition.

#### *Claim Rejection 35 U.S.C. 103*

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al. (US 5,554,646 of record) and Cook et al. (US 5,428,072 of record).

Cook'646 teach a active form conjugated linoleic acid, i.e., 10,12-octadecadienoic acid and 9,10-octadecadienoic acid, which including ester, salt and free acid of conjugated linoleic acid. See. Particularly, column 1 lines 65-67, column 2, line 1 and column 4, lines 1-9. Cook'646 further teach a animal feeding comprising the said active form of conjugated linoleic acid. See, particularly, column 1, lines 39-60 and examples 1-4. The feeding can also comprising phosphotides. See, column 5, line 47. Cook'646 also teach a safe and effective method for reducing body fat in animal by administering the said animal feed. See, particularly, the abstract. C9,t11- and t10,c12- isomer are predominantly major isomer of the conjugated linoleic acid active form of Cook'646. See, particularly, column 4, lines 50-55. Cook'072 teach a method of increasing the feed

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efficiency in an animal which comprises administering to the animal a safe and effective amount of conjugated linoleic acid. See, the abstract.

Cook et al. do not teach expressly the conjugated linoleic acid active form further comprising the regio isomers 8,10- and an 11,13- octadecadienoic acid derivative.

However, since the preferred amounts in the applicants claims are limited to less than 2 percent, this amount includes zero percent of the regio isomers. Thus, Cook' teachings meet this limitation.

Therefore it would have been prima facie obvious to a person of ordinary skill in the art, at the time the claimed the invention was made, to make a conjugated linoleic ester mixture comprising predominantly c9,t11- and t10, c12-octadecadienoic ester without/or with less than 2% of 8,10- and 11,13- octadecadienoic ester and employ the mixture in animal feed.

A person of ordinary skill in the art would have been motivated to make a conjugated linoleic ester mixture comprising predominantly c9,t11- and t10, c12-octadecadienoic ester without/or with less than 2% of 8,10- and 11,13- octadecadienoic ester and employ the mixture in animal feed because 8,10- and 11,13- octadecadienoic esters are known not to be required in the active form of conjugated linoleic acid and the c9,t11 and t10,c12 ester mixture is known to be useful in animal feeds.

Applicants' amendments and remarks have been fully considered but they are not persuasive as discussed above.

Regarding the remarks that most commercially available CLA compositions also contain 8,10- and 11,13- isomer of conjugated linoleic acid, it is noted that the cited prior art does not disclose the presence of any significant amounts of isomers such as the 8,10- and 11,13- isomer

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of conjugated linoleic acid in the compositions therein. Further, purification of each individual isomer of conjugated linoleic ester is considered within the skill of artisan, absent the evidence to the contrary. Applicants have not demonstrated any unexpected results, e.g., in the purity of isomers useful herein over the prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Shengjun Wang

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June 8, 2000

  
MINNA MOEZIE  
PRIMARY EXAMINER